

Case No.  
June 5, 2019

Brodsky v. Palmer  
Summons & Complaint

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Jay Brodsky  
240 East Shore Road, #444  
Great Neck, NY 11023  
Telephone: (973) 568-1666  
E-mail: [demcointerexport@yahoo.com](mailto:demcointerexport@yahoo.com)  
Plaintiff ProSe on Behalf of Himself

Case No. \_\_\_\_\_

**UNITED STATE DISTRICT COURT    R E C E I V E D**  
**DISTRICT OF NEW JERSEY**

**JUN 10 2019**

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH  
CLERK

**THE MATTER OF:**

**JAY BRODSKY**  
**PLAINTIFF**

*-against-*

**PALMER ADMINISTRATIVE SERVICES, INC.**  
**DOES 1 THROUGH 5**  
**DEFENDANT**

.....

• **Issues Before the Court:**  
• 47 U.S.C.A. § 227 et seq.  
• 15 U.S.C. §§ 45(a), 45(m)(1)(A),  
• 53(b)  
• 15 U.S.C. §§ 6101-6108  
• 15 U.S.C. § 6105  
• 15 U.S.C. § 45(a)  
• 16 C.F.R. Part 310  
• Truth in Caller ID Act of 2009  
• Anti Spoofing Act 2017  
• NYS Senate Bill S434  
• NJ-P.L.1960, c.39 (C.56:8-1 et  
• seq.  
• NY Gen. Bus. Law § 349  
• NY Exec. Law § 63(1)  
• Common Law Fraud  
• Conspiracy  
• (RICO) 18 U.S.C. § 1961 et seq.,  
• 15 U.S.C. §§ 52(a)  
• 15 U.S.C. § 45(a)(1)

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**SUMMONS & COMPLAINT**

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**I. INTRODUCTION**

1. On this 5th day of June, 2019, Jay Brodsky, hereafter known as ‘PLAINTIFF,’ a is a natural ‘person’ and resident of Nassau County, New York, duly deposes that the facts as stated herein are true to the best of his knowledge.

**II. VENUE AND JURISTITION:**

2. At all times relevant, Plaintiff is a citizen of the State of New York. Plaintiff is, and at all times mentioned herein was, a ‘person’ as defined by 47 U.S.C. § 153 (39).
2. Venue is appropriate under 28 U.S.C.A. § 1332 because, amongst other things: ‘PALMER ADMINISTRATIVE SERVICES, INC.’ hereafter known as ‘PALMER,’ directs its business activities to residents of New York State and to others similarly situated nationwide, from its headquarters at, OCEAN, NEW JERSEY; a ‘TEXAS’ Corporation, also operating a commercial website known as, <https://www.palmeradministration.com>.
3. The Federal courts’ jurisdiction is limited, and Federal courts generally may only hear a case if it involves a question of Federal law or where diversity of citizenship exists between the parties and the amount in controversy exceeds



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the jurisdictional minimum. See 28 U.S.C. §§ 1331, 1332. Federal question jurisdiction exists in all civil actions arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. A claim ‘arises under’ federal law when the federal question is presented on the face of the plaintiff’s well-pleaded complaint. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004). The party asserting jurisdiction carries the burden of establishing subject matter jurisdiction. *Volvo Trucks N. Am., Inc. v. Crescent Ford Truck Sales, Inc.*, 666 F.3d 932, 935 (5th Cir. 2012).

4. The Plaintiff brings this putative action against the Defendants to secure redress *inter alia*, violations of the, Telephone Consumer Protection Act, 47 U.S.C. § 227 (‘TCPA’).
5. In addition, venue is proper in this District under Title 28, United States Code, Section 1391(b) because Defendants improper conduct alleged in this complaint were directed to Plaintiff from the State of ‘NEW JERSEY,’ and/ or originated from the judicial district of ‘NEW JERSEY.’
6. The Plaintiff is one of many phone call recipients who received illegal telemarketing phone calls from, ‘PALMER.’

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7. The Plaintiff brings this action to enforce the consumer privacy provisions of the 'Telephone Consumer Protection Act,' hereafter known as, 'TCPA,' and achieve redress and compensation for himself as an individual consumer. In a case such as this, where individual damages are set by statute at \$500-\$1,500 per violation, the inclusion of punitive damages are best if not the only means of obtaining redress for the type of wide-scale, illegal debt collection telemarketing practices at issue, and is consistent with the private right of action afforded to the Plaintiff.
8. In this case however, the Defendants routinely used an, 'Automatic Telephone Dialing System,' hereafter known as, 'ATDS,' that redirected spurious or 'SPOOFED' caller ID phone numbers to Plaintiff on at least 199 occasions by its agents in consonance to, 47 USC § 227 *et seq.*, TRUTH IN CALLER ID ACT OF 2009 and/or 'SECTION [1] of P.L.1966, c.39 (C.56:8-13) and SECTION [2] of P.L.1999, c.129 (C.56:8-14.3)(New Jersey Truth in Caller ID Act).
9. Specifically, Plaintiff brings a claim pursuant to 47 U.S.C. § 227(b), for unsolicited telemarketing calls made by Defendant, or at Defendant's



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direction, to the cellular telephones of Plaintiff and others using an  
  
'autodialer.'

10. The nature and/or intent of Defendants telemarketing campaign was to fraudulently sell Plaintiff an 'extended vehicle warranty insurance,' using deceptive ~~and~~ and misleading sales methods.
11. DOES' 1 through 5, include officers and directors of, 'PALMER,' who may be personally liable for the acts alleged in this Complaint pursuant to 47 U.S.C. § 217 of the Telephone Consumer Protection Act, which states;  
  
    'The act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as of that person, 47 U.S.C. § 217' (emphasis added).

Texas v. American Blastfax, Inc., 164 F.Supp.2d 892, 899 (W.D. Tex. 2001)

("American Blastfax"); Sandusky Wellness Center, LLC v. Wagner

Wellness, Inc., 2014 WL 1333472, at \* 3 (N.D. Ohio March 28, 2014);

Maryland v. Universal Elections, 787 F.Supp.2d 408, 415-16 (D.Md. 2011)

("Universal Elections"); Baltimore-Washington Tel Co. v. Hot Leads Co.,

584 F.Supp.2d 736, 745 (D.Md. 2008); Covington & Burling v. Int'l Mktg.

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& Research, Inc., 2003 WL 21384825, at \*6 (D.C.Super Apr. 17, 2003);

Chapman v. Wagener Equities, Inc. 2014 WL 540250, at \*16-17 (N.D.Ill.

Feb. 11, 2014); Versteeg v. Bennett, Deloney & Noyes, P.C., 775 F.Supp.2d

1316, 1321 (D.Wy.2011) ("Versteeg")

### **III. THE PARTIES**

#### **PLAINTIFF:**

12. JAY BRODSKY, 240 East Shore Road, Apt. 444, Great Neck, New York  
11023;

#### **DEFENDANTS:**

13. 'PALMER ADMINISTRATIVE SERVICES, INC.,, a 'TEXAS' corporation,  
Registered Agent, O. Murray McNeely, 9 Tuscan Villa Circle Lubbock, TX  
79423-4928; headquartered at, 3430 Sunset Avenue, Ocean, New Jersey  
07712;
14. At all times material to this complaint, 'PALMER,' conducted its daily  
business operations from, OCEAN, NEW JERSEY using the same  
equipment and same employees, and held themselves out to the public under  
the business name, 'PALMER ADMINISTRATIVE SERVICES, INC.'



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15. DOES' 1 through 5, Plaintiff is presently unable to confirm which of 'PALMERs' wholly owned subsidiaries and/or affiliated companies; DOES' 1 through 5 are liable for the claims asserted herein. Discovery will allow Plaintiff to proceed with naming additional, 'PALMER,' affiliated and owned companies. Other persons identities included in DOES' 1 through 5, whose identities are unknown to Plaintiff participated in the events alleged herein which give rise to the claims asserted by Plaintiff.

#### **IV. JURISDICTION AND VENUE**

16. The Court has Federal question jurisdiction over the TCPA claims. Mims v. Arrow Fin. Servs., LLC, 132 S. Ct. 740 (2012).
17. The venue is proper pursuant to 28 U.S.C. § 1331 because a claim "arises under" federal law when the federal question is presented on the face of the Plaintiff's well-pleaded complaint.
18. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the wrongful conduct giving rise to this case occurred in, was directed too Plaintiff, and/or emanated from this District.

#### **V. THE TELEPHONE CONSUMER PROTECTION ACT**

19. Specifically, 47 U.S.C. § 227(b) provides:

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(1) Prohibitions It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system ... (iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

20. In 1991, Congress enacted the, ‘TCPA’ to regulate the explosive growth of the telemarketing industry which today is believed to have put forth nearly, SIXTY BILLION (60,000,000,000) illegal telemarketing calls (according to the FTC) to consumers over the past few years and that number is expected to grow exponentially over the next few years if something isn’t done to thwart the efforts of offenders from continuing their illegal telemarketing practices. In so doing, Congress recognized that, ‘unrestricted telemarketing and debt collection calls. . .can be an intrusive invasion of privacy with 5-10% of those illegal calls resulting in recipients being <sup>1</sup>defrauded out of Thousands of Dollars each, thereby making these calls costly and dangerous

<sup>1</sup> By TRACEY KAPLAN | [tkaplan@bayareanewsgroup.com](mailto:tkaplan@bayareanewsgroup.com) | Bay Area News Group

PUBLISHED: July 8, 2018 at 9:00 am | UPDATED: July 10, 2018 at 5:25 am

They boldly prey on the elderly and other vulnerable groups like immigrants and small businesses by impersonating a variety of agencies, from the IRS to student-loan collectors. In the latest shakedown, immigrants in New York City reported being swindled out of millions of dollars by Mandarin-speaking scammers pretending to be from the Chinese consulate and demanding money to protect victims’



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to the well being of mostly senior citizens who are more vulnerable to these types of calls than other segments of the population. The ‘Telephone Consumer Protection Act of 1991,’ Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq.’

21. The TCPA’s most severe restrictions address telemarketing calls put forth to residential and cellular telephone lines. In enacting the statute, Congress stated that banning these calls is ‘the only effective means of protecting telephone consumers from this nuisance and privacy invasion.’ Id. § 2(10) and (12); see also Mims, 132 S. Ct. at 745.
22. Accordingly, the ‘TCPA’ prohibits persons and/or companies from initiating telemarketing calls to residential, business and cellphones using prerecorded voice messaging or by using an, ‘<sup>2</sup>Automatic Telephone Dialing System,’ or ‘<sup>3</sup>Predictive Dialing System,’ devices commonly referred to as, ‘ATDS,’ to call and/or deliver messages without the prior express consent of the called

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<sup>2</sup> An **automatic dialer** (**auto dialer**, **auto-dialer**, **autodialer**) is an electronic device or software that automatically dials **telephone numbers**. Once the call has been answered, the autodialer either plays a recorded message or connects the call to a live person.

<sup>3</sup> A **predictive dialer** dials a list of **telephone numbers** and connects answered dials to people making calls, often referred to as agents. Predictive dialers use statistical **algorithms** to minimize the time that agents spend waiting between conversations, while minimizing the occurrence of someone answering when no agent is available



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party *ACA International v. Federal Communications Commission*, 885 F.3d 687 (D.C. Cir. 2018); (*more recently, September 2018*): *Marks v. Crunch San Diego, LLC*, No. 14-56834, 2018 WL 4495553 (9th Cir. Sept. 20, 2018) (Ninth Circuit).

23. For autodialed telemarketing calls made to cellular telephones and landlines prior to October 16, 2013, the telemarketer must show they had a consumers ‘prior expressed written consent,’ to call via pre-recorded or autodialed messages. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th Cir. 2009) (“*Satterfield*”). ‘Prior express consent,’ is an affirmative defense for which the defendant bears the burden of proof. See *Grant v. Capital Management Services, L.P.*, 2011 WL 3874877, at \*1, n.1. (9th Cir. Sept. 2, 2011); see also *Robbins v. Coca-Cola Company*, No. 13-cv-132, 2013 WL 2252646, at \*2 (S.D. Cal. May 22, 2013).
24. For autodialed telemarketing and/or debt collection calls made to cellular telephones and landlines on or after October 16, 2013, telemarketers must show prior expressed written consent (a) bearing the signature of the person

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<sup>4</sup> **Prior Express Consent:** This term is not specifically defined in the statute or the FCC regulations. The FCC and most courts have construed the term to mean any provision (written or oral) of consent to receive calls at a particular phone number. Thus, when a consumer knowingly provides a phone number to a business, they give that business permission to send commercial calls or messages to the phone number provided.



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who is being dialed, thereby providing consent; (b) written consent must specify the telephone number to which the person consenting is to be called; (c) it must show clearly that it authorizes the company to call the person being dialed by use of an autodialer or prerecorded message for telemarketing purposes; and (d) providing consent is not a condition of purchasing goods or services. See In re Rules & Regs.

**VI. IMPLEMENTING THE TCPA, 27 FCC Rcd 1830, 1844 ¶ 33 (2012)**

25. For calls dialed on or after October 16, 2013, having an established business relationship exemption is no longer applicable.
26. On May 9, 2013, the [F]CC released a Declaratory Ruling holding that a, Corporation, or other entity that contracts out its telephone marketing, ‘May be held vicariously liable under federal common law principles of agency for violations of . . . section 227(b) . . . that are committed by third-party telemarketers.’
27. More specifically, the [F]CC, 2013 Ruling held that, even in the absence of evidence of a formal contractual relationship between a business and the telemarketer, it is liable for telemarketing calls if the telemarketer ‘has

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apparent (if not actual) authority' to make the calls. [F]CC, 2013 Ruling, 28

[F]CC Rcd at 6586 ¶ 34.

28. The [F]CC has rejected a narrow view of TCPA liability, including the assertion that a businesses liability requires a finding of formal agency and immediate direction and control over the third-party who placed the telemarketing call.
29. Under the TCPA, a producer of a product or service may vicariously be liable for a third-party telemarketers' violations of, Section 227(b), even if the telemarketer did not physically dial the illegal call, and even if a business did not directly control the telemarketer who did.
- (a) In re Rules and Regulations Implementing the, 'Telephone Consumer Protection Act,' Declaratory Ruling on Motion by ACA International for Reconsideration, 23 FCC Rcd. 559, 565, ¶ 10 (Jan. 4, 2008); Birchmeier v. Caribbean Cruise Line, Inc., 2012 WL 7062748 (Dec. 31, 2012).
30. <sup>5</sup>A business is liable under, Section 227(b) when it has authorized a telemarketer to market its goods, services or attempt to collect a debt.

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<sup>5</sup> In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning the TCPA Rules, CG Docket No. 11-50, 28 FCC Rcd 6574, 6574 ¶ 1 (2013) ("FCC 2013 Ruling").



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31. Additionally, a business may be vicariously be liable for a Section 227(b) violation under principles of apparent authority and ratification.

32. The [F]CC 2013 Ruling further clarifies the circumstances under which a telemarketer has apparent authority:

Apparent authority may be supported by evidence that the business allows the outside sales entity access to information and systems that normally would be within the businesses exclusive control, including: access to detailed information regarding the nature and pricing of the seller's products and services or to the seller's customer information. The ability by the outside sales entity to enter consumer information into the businesses sales or accounting systems, as well as the authority to use the businesses trade name, trademark and service mark may also be relevant. It may also be persuasive that the business approved, wrote or reviewed the outside entities telemarketing scripts. Finally, a business would be responsible under the 'TCPA' for the unauthorized conduct of a third-party telemarketer entity that is otherwise authorized to market on the businesses and/or owners behalf if the business entity knew (or reasonably should have known) that the telemarketer was violating the TCPA on the business entities behalf and the business failed to take effective steps within its power to force the telemarketer to cease and desist from engaging in that conduct.

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33. The [F]CC, 2013 Ruling, further held that, even in the absence of evidence of a formal contractual relationship between seller and telemarketer, it thereby encumbers a seller as liable if the telemarketer, 'Has apparent (if not actual) authority' to effectuate the calls.

**VII. FACTS & STANDING**  
**The Illegal Telemarketing Campaign at Issue**

34. Plaintiff has standing to bring this suit on his own behalf under Article III of the United States Constitution because Plaintiffs' claims state: (a) a valid injury in fact; (b) an injury which is traceable to the conduct of Defendants; and (c) is likely to be redressed by a favorable judicial decision. See *Spokeo v. Robins*, 578 U.S. \_\_\_ (2016) at 6; *Robins v. Spokeo*, 867 F.3d 1108 (9th Cir. 2017) (cert denied. 2018 WL 491554, U.S., Jan. 22 2018); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); and *Chen v. Allstate Inc. Co.*, 819 F.3d 1136 (9th Cir. 2016)
35. An, 'extended vehicle warranty,' sometimes called a 'service agreement, service contract, or a maintenance agreement,' is a prolonged warranty offered to consumers to replace the standard warranty once it is terminated.



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36. 'PALMER' offers a variety of vehicle protection insurance plans. In business for over 20 years they offer a myriad of customizable plans to meet customer and agent needs.
37. The trademarks and trade-names belonging to, 'PALMER,' are widely recognized due to an extravagant internet and telemarketing advertising campaign.

**PALMERs CONTACT WITH PLAINTIFF**

38. The Defendants contacted the Plaintiff by telephone at least 199 times over the past three years in an attempt to solicit the purchase of an 'extended vehicle warranty,' related to a 2013 Mercedes Benz he never owned.
39. During those solicitations, Defendants were duly advised by Plaintiff that he does not own, lease or enjoy possession of the vehicle described during the inquiries.
40. Over a three year period of time, specifically from 2016-2018, 'PALMER' had been specifically advised to, 'CEASE and DESIST' from any further promulgation of unsolicited telemarketing phone calls directed to Plaintiff.
41. However, those repeated demands for privacy all fell on deaf ears. During those unsolicited telemarketing phone calls, Plaintiff also demanded that



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'PALMER' remove telephone numbers belonging Plaintiff, (973) 568-1666 and (973) 568-3424, from their telephone telemarketing database. Upon effectuating those requests, the 'PALMER' telemarketing agents systematically terminated the calls thereby preventing Plaintiff from any further contact. Returning or dialing 'PALMERs' telemarketing calls were rendered impossible because the caller ID and/or the origin of the phone calls had been, 'SPOOFED' and thereby associated with non-working telephone numbers in consonance to Federal and New Jersey State law. On several occasions the 'PALMER' telemarketing agents engaged in salacious or malfeasant discourse often resulting in a tense standoff between the parties.

42. 'SPOOFED' phone numbers related to 'PALMERs' telemarketing calls are:

09/22/2018 - 05:01P - (862) 227-8513  
09/07/2018 - 03:53P - (973) 833-9027  
09/09/2018 - 01:50P - (862) 204-8165  
09/14/2018 - 06:13P - (973) 568-4587  
10/21/2018 - 12:26P - (551) 900-8091  
10/31/2018 - 06:59P - (732) 201-9032  
10/17/2018 - 03:29P - (973) 568-2176  
10/19/2018 - 01:39P - (973) 568-1274  
10/19/2018 - 04:05P - (609) 248-9851  
10/23/2018 - 01:49P - (862) 285-4067  
10/24/2018 - 03:27P - (973) 762-0808  
10/24/2018 - 04:15P - (973) 307-9287  
10/26/2018 - 02:21P - (973) 568-9546  
10/26/2018 - 03:28P - (973) 568-7777  
10/30/2018 - 06:05P - (973) 568-2118  
10/03/2018 - 05:20P - (201) 304-9631  
10/05/2018 - 04:22P - (973) 640-5250  
10/05/2018 - 08:45P - (973) 568-1811  
10/10/2018 - 02:16P - (973) 568-5048

10/11/2018 - 07:36P - (609) 248-9809  
10/16/2018 - 06:37P - (973) 385-1553  
11/30/2018 - 05:02P - (201) 354-1618  
11/17/2018 - 03:35P - (973) 568-1446  
11/22/2018 - 06:51P - (973) 875-1438  
11/27/2018 - 02:21P - (973) 568-2143  
11/30/2018 - 03:14P - (973) 975-0856  
11/16/2018 - 12:04P - (973) 568-4909  
11/10/2018 - 03:31P - (201) 220-5664  
11/02/2018 - 02:09P - (973) 302-6395  
11/12/2018 - 06:01P - (973) 996-3172  
11/13/2018 - 01:25P - (973) 233-4964  
11/13/2018 - 02:42P - (973) 457-4425  
11/13/2018 - 07:53P - (973) 339-7320  
11/14/2018 - 03:31P - (973) 339-7320  
12/27/2018 - 03:24P - (732) 822-2973  
12/11/2018 - 01:30P - (973) 568-5121  
12/12/2018 - 03:24P - (973) 568-1094



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01/21/2016 - 03:43P - (973) 755-6883  
01/21/2016 - 06:38P - (201) 380-0014  
01/14/2016 - 01:02P - (201) 220-5664  
05/02/2016 - 02:57P - (973) 607-2629  
05/03/2016 - 03:05P - (973) 343-0599  
04/21/2016 - 02:00P - (973) 568-6942  
04/29/2016 - 04:31P - (973) 833-4807  
04/29/2016 - 03:09P - (973) 755-6863  
04/22/2016 - 05:24P - (201) 885-4312  
04/25/2016 - 02:13P - (201) 249-5413  
04/14/2016 - 03:54P - (201) 885-4283  
04/11/2016 - 01:19P - (908) 568-1668  
04/14/2016 - 03:54P - (201) 885-4283  
04/11/2016 - 01:19P - (908) 568-1668  
04/13/2016 - 12:52P - (973) 342-3890  
04/05/2016 - 04:55P - (201) 885-4283  
03/26/2019 - 06:01P - (973) 718-3284  
08/03/2016 - 01:30P - (973) 755-6973  
08/10/2016 - 02:42P - (973) 755-6903  
08/18/2016 - 05:09P - (973) 755-6908  
08/29/2016 - 05:52P - (201) 885-4312  
07/27/2016 - 03:14P - (973) 564-6333  
07/28/2016 - 06:21P - (862) 534-6878  
11/19/2016 - 01:16P - (609) 623-0118  
07/01/2016 - 04:53P - (973) 912-0080  
06/05/2016 - 01:42P - (862) 202-7193  
02/17/2017 - 02:24P - (973) 435-0344  
04/10/2017 - 07:56P - (973) 209-0900

04/13/2017 - 01:00P - (973) 287-7927  
04/17/2017 - 01:08P - (973) 568-2013  
04/20/2017 - 05:21P - (973) 718-4536  
04/26/2017 - 01:33P - (973) 755-6476  
04/25/2017 - 05:30P - (973) 855-4989  
04/26/2017 - 03:47P - (973) 755-6233  
04/27/2017 - 04:51P - (973) 958-5673  
05/09/2017 - 04:03P - (973) 459-4611  
05/02/2017 - 05:46P - (856) 373-4211  
05/25/2017 - 03:37P - (973) 313-8005  
06/01/2017 - 04:00P - (973) 370-8017  
06/15/2017 - 04:27P - (973) 310-6843  
06/16/2017 - 01:21P - (973) 310-6840  
07/05/2017 - 01:47P - (973) 310-7059  
07/21/2017 - 02:59P - (973) 604-5460  
07/26/2017 - 06:11P - (973) 310-7843  
08/14/2017 - 05:18P - (973) 604-5443  
08/29/2017 - 01:47P - (973) 363-0114  
09/02/2017 - 05:38P - (908) 864-3633  
09/07/2017 - 03:53P - (973) 833-9027  
09/12/2017 - 02:11P - (973) 568-6069  
09/14/2017 - 06:13P - (973) 568-4587  
09/22/2017 - 02:06P - (973) 604-5460  
09/22/2017 - 04:23P - (973) 604-5460  
09/22/2017 - 05:01P - (862) 227-8513  
10/03/2017 - 05:20P - (201) 304-9631  
10/05/2017 - 04:22P - (973) 640-5250  
10/05/2017 - 08:45P - (973) 568-1811



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10/10/2017 - 02:16P - (973) 568-5048  
10/11/2017 - 03:29P - (609) 248-9809  
10/17/2017 - 03:29P - (973) 568-2176  
10/19/2017 - 01:34P - (973) 568-1274  
10/19/2017 - 04:05P - (609) 248-9851  
10/23/2017 - 01:49P - (862) 285-4067  
10/24/2017 - 03:27P - (973) 762-0808  
10/24/2017 - 04:15P - (973) 307-9287  
10/26/2017 - 02:21P - (973) 568-9546  
10/30/2017 - 05:24P - (973) 568-2118  
12/11/2017 - 01:30P - (973) 568-5121  
12/12/2017 - 03:24P - (973) 568-1094  
12/21/2017 - 09:33P - (908) 487-4296  
12/27/2017 - 03:24P - (732) 822-2973  
12/30/2017 - 11:07A - (973) 568-5855  
12/21/2017 - 04:48P - (973) 568-4128  
01/08/2018 - 02:37P - (973) 568-6661  
01/08/2018 - 03:49P - (973) 568-6406  
01/18/2018 - 02:53P - (973) 568-7131  
01/24/2018 - 02:26P - (551) 900-8165  
01/29/2018 - 06:43P - (973) 568-7349  
01/29/2018 - 01:39P - (908) 285-2166  
01/30/2018 - 01:53P - (973) 564-6841  
01/30/2018 - 04:31P - (973) 382-2468  
02/01/2018 - 12:59P - (908) 285-2166  
02/06/2018 - 05:41P - (973) 528-8390  
02/06/2018 - 05:49P - (973) 307-9484  
02/12/2018 - 06:49P - (973) 284-8693  
02/14/2018 - 04:23P - (973) 369-9114  
02/14/2018 - 05:40P - (973) 307-9123  
02/14/2018 - 05:45P - (973) 369-9114  
02/15/2018 - 03:24P - (973) 568-6725  
02/16/2018 - 12:59P - (973) 568-4483  
02/16/2018 - 01:10P - (973) 568-7997  
02/19/2018 - 04:08P - (908) 736-8985  
02/19/2018 - 06:11P - (973) 568-2614  
03/01/2018 - 06:44P - (973) 307-9421  
02/21/2018 - 03:09P - (973) 568-3426  
02/22/2018 - 12:54P - (732) 210-0547  
02/06/2018 - 05:41P - (973) 528-8390  
02/08/2018 - 05:49P - (973) 307-9484  
03/03/2018 - 07:29P - (201) 490-4285  
03/09/2018 - 06:43P - (201) 365-2002  
03/13/2018 - 04:51P - (973) 936-5710  
03/16/2018 - 04:30P - (973) 737-9061  
03/28/2018 - 03:02P - (732) 738-5134  
03/29/2018 - 02:27P - (973) 569-2605  
03/29/2018 - 04:55P - (732) 738-6038  
05/07/2018 - 03:59P - (973) 643-7000  
04/06/2018 - 02:02P - (973) 568-6661  
04/12/2018 - 03:48P - (201) 215-2656  
04/13/2018 - 02:03P - (973) 315-7672  
04/17/2018 - 01:44P - (201) 218-6199

04/17/2018 - 01:44P - (201) 218-6199  
04/19/2018 - 04:04P - (973) 310-6628  
05/01/2018 - 01:14P - (201) 713-0985  
04/18/2018 - 04:07P - (973) 675-4279  
05/08/2018 - 10:53A - (201) 713-0983  
05/09/2018 - 02:38P - (201) 713-0983  
05/09/2018 - 04:19P - (973) 277-9132  
05/11/2018 - 05:54P - (973) 355-7190  
05/17/2018 - 11:01P - (973) 737-9058  
05/23/2018 - 06:29P - (973) 307-9473  
05/24/2018 - 02:51P - (973) 568-1678  
05/14/2018 - 02:18P - (973) 653-2868  
05/15/2018 - 03:23P - (973) 640-1615  
05/30/2018 - 05:40P - (973) 580-1315  
05/31/2018 - 01:46P - (973) 580-1315  
05/31/2018 - 02:48P - (973) 564-6909  
06/05/2018 - 04:35P - (973) 307-9476  
06/05/2018 - 05:02P - (973) 569-1543  
06/06/2018 - 05:30P - (973) 573-0898  
06/11/2018 - 03:50P - (973) 577-1757  
06/13/2018 - 04:11P - (973) 573-8968  
07/18/2018 - 04:11P - (973) 402-9308  
07/10/2018 - 02:20P - (973) 307-9628  
07/03/2018 - 02:41P - (973) 912-0080  
07/11/2018 - 03:54P - (973) 569-2279  
07/11/2018 - 06:02P - (973) 569-2279  
07/20/2018 - 01:56P - (973) 569-1595  
07/30/2018 - 03:03P - (973) 568-4702  
07/30/2018 - 06:01P - (973) 568-4702  
08/01/2018 - 01:50P - (973) 575-9293  
08/15/2018 - 02:47P - (856) 221-2450  
08/17/2018 - 12:54P - (609) 452-5057  
08/17/2018 - 06:46P - (973) 240-8732  
08/18/2018 - 04:40P - (973) 240-2473  
08/20/2018 - 01:24P - (973) 240-8732  
08/21/2018 - 04:11P - (973) 967-8650  
08/21/2018 - 03:52P - (973) 568-6828  
08/23/2018 - 02:34P - (973) 277-9132  
08/13/2018 - 06:05P - (973) 572-7878  
09/14/2018 - 02:39P - (973) 570-4880  
09/17/2018 - 03:44P - (973) 599-4635  
09/19/2018 - 07:14P - (973) 574-1882  
10/01/2018 - 02:32P - (973) 580-5646  
10/01/2018 - 01:55P - (973) 206-4268  
09/18/2018 - 04:18P - (973) 240-8766  
09/18/2018 - 04:04P - (973) 206-4268  
09/18/2018 - 06:13P - (973) 240-8766  
09/20/2018 - 03:56P - (973) 206-4268  
09/20/2018 - 06:09P - (973) 793-8134  
09/21/2018 - 01:17P - (973) 397-4068  
09/21/2018 - 07:34P - (973) 875-6421  
09/22/2018 - 02:06P - (973) 604-5460  
09/22/2018 - 04:23P - (973) 604-5460



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43. On February 15, 2018, at 2:24PM, 'PALMER' contacted Plaintiff

(973) 369-9114 despite being repeatedly advised to, 'CEASE and DESIST' from any further promulgation of phone solicitations to purchase, 'extended vehicle warranty insurance' for a, '2013 Mercedes Benz,' that Plaintiff never owned. 'EVAN MICHAELS,' hereafter known as, 'MICHAELS,' a telemarketer employed by 'PALMER,' was duly confronted. After again demanding that, 'PALMER,' 'CEASE and DESIST,' Plaintiff abruptly terminated the phone call. At 3:24PM, 'MICHAELS' called again (973) 568-6725, despite Plaintiffs' demand too, 'CEASE and DESIST.' On all prior occasions when 'PALMER' called Plaintiff, a predictive or 'automated telephone dialing system' (ATDS) was engendered. On all occasions when Plaintiff received phone solicitations from 'PALMER,' a 'SPOOFED' caller ID was engendered in consonance to the, 'TRUTH IN CALLER ID ACT 2009,' and since the calls originated from the State of New Jersey they violated, 'New Jersey-P.L.1960, c.39 (C.56:8-1 et seq.)' As Plaintiff resided in the State of New York, the calls were in violation of, NYS Senate Bill S434 which states:

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Section 1. The general business law is amended by adding a new section 399-ppp to read as follows:

'S 399-PPP. PROHIBITION ON PROVISION OF DECEPTIVE CALLER IDENTIFICATION INFORMATION. 1. IT SHALL BE UNLAWFUL FOR ANY BUSINESS ENTITY, IN CONNECTION WITH ANY TELECOMMUNICATIONS SERVICE OR VOIP SERVICE, TO CAUSE ANY CALLER IDENTIFICATION SERVICE TO TRANSMIT FALSE CALLER IDENTIFICATION INFORMATION, WITH THE INTENT TO DEFRAUD OR HARASS, WHEN MAKING A CALL TO ANY PERSON WITHIN THE STATE.'

44. On all calls received by Plaintiff from 'PALMER,' there was a substantial pause (dead air) of at least seven-seconds prior to a human voice joining the conversation. Although difficult to describe, on each occasion prior to a human voice joining the conversation there was an audible, 'swoosh' or 'clicking' noise, or a combination of both, identical to that of a phone being lifted from a receiver or cradle.
45. Plaintiff answered the phone with a courteous, 'Hello' which he repeated approximately four times until the party calling finally joined the conversation. When the human voice finally responded, it was, 'MICHAELS,' who again identified himself as calling on behalf of 'PALMER.' 'MICHAELS' addressed Plaintiff by name thereby affirming



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‘PALMER’ had somehow gained access to Plaintiffs’ personal information.

A conversation then ensued as follows:

“Who did you say you were?” .....

Evan Micheals replied,

“I’m with the Palmer Warranty Administration and I’m calling about your 2013 Mercedes Benz.” .....

Plaintiff was fully aware that he did not own a 2013 Mercedes Benz but further engaged ‘MICHAELS’ to aggregate additional information to disclose his motive for calling,

“What is Palmer Warranty exactly?” .....

Evan Micheals boldly replied,

“Palmer Warranty is part of Palmer Mercedes Benz of Atlantic City in Ocean County.” .....

Plaintiff then sternly demanded,

“I have been asking your company to remove my name from its calling list for a long time. If you do not remove my name immediately I will file a Federal lawsuit against you and your company.” .....

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Evan Micheals replied with abundant laughter to qualify his next statement ,

“It makes no difference what you do. If you want to file a lawsuit, go ahead.”.....

Evan Micheals continued to laugh until Plaintiff terminated the phone call.

46. The unauthorized robocall placed by ‘PALMER’ invaded Plaintiffs privacy and thereby interfered with the use of his cellular telephone.
47. The ‘PALMER’ Defendants should have been aware that using an ATDS to market their extended vehicle warranty insurance violated the TCPA.
48. The ‘PALMER’ Defendants should have know that displaying a ‘SPOOFED’ caller ID is illegal and violates the, TRUTH IN CALLER ID ACT 2009, NEW JERSEY-P.L.1960, c.39 (C.56:8-1 et seq.)’ and NYS Senate Bill S434.
49. Plaintiff never contacted any of the ‘PALMER’ Defendants for any purpose, and had no business relationship with them or anyone associated with them.
50. Plaintiff was aware the reason for the unsolicited telemarketing calls was to market ‘PALMERS’ insurance to him.



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51. Plaintiff at no time granted consent to the 'PALMER' Defendants to contact him thereby intruding on his privacy and causing annoyance and an unnecessary expenditure of his time to those calls.
52. On February 15, 2018 at 5:05PM, Plaintiff suspecting foul play contacted, Mercedes Benz of Atlantic City, New Jersey (MBAC) to confirm 'PALMERs' claims at (609) 645-9000.
53. Plaintiff asked for the general manager of 'MBAC' to inquire about whether or not 'PALMER' had any association with 'MBAC.' The answer was a very resounding, 'NO.' The manager asked for and was supplied with 'PALMERs' contact information to demand that they, 'CEASE and DESIST' from engendering their good name.
54. Plaintiff is the exclusive owner and user of the telephone numbers assigned to him ending in 1666 and 3424 and is the account holder of record for those accounts.
55. 'PALMER' knowingly effectuated the use of fictitious caller IDs' commonly known as 'SPOOFING' that either mimic some or all of the numbers displayed as the caller ID or the area code of the person being called. This is done to lull prospective buyers into a false sense of security

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that the caller is located nearby and therefore must be a neighbor which is in violation of FTC Telemarketing Sales Rule ("TSR"), as amended, 16 C.F.R. Part 310.

56. 'PALMER' routinely purchases the names and private information from third party vendors in order to tailor its telemarketing scheme to the products they are attempting to sell. In this particular case it was extended automobile warranty insurance.
57. At all times relevant to this lawsuit, 'PALMER' had the ability to supervise, monitor, and control the conduct of its telemarketers, but consciously turned a 'blind eye' to its illegal conduct, while simultaneously accepting benefits of 'PALMERs' combined illegal acts.
58. At all times relevant to this lawsuit, 'PALMER' had the authority to issue a 'CEASE and DESIST' order to its telemarketers, employees', agents, representatives and subsidiaries thereby revoking their authority to illegally market products using 'PALMERs' widely recognized name.
59. At all times relevant to this lawsuit, 'PALMERs' owners, directors and managers had the authority to issue a 'CEASE and DESIST' order to its



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telemarketers thereby revoking the authority to telemarket on 'PALMERs' behalf.

60. At no time did any of the 'PALMER' Defendants issue such a 'CEASE and DESIST' order to its telemarketers, agents, employees' and/or subsidiaries.
61. At all times relevant to this lawsuit, the 'PALMER' Defendants allowed its telemarketers, agents, employees and subsidiaries to telemarket using its trade names and to post its trademarks on telemarketers websites.
62. By allowing 'PALMERs,' telemarketers and its associated subsidiaries to telemarket using its trade name, and by allowing 'PALMER' to use its trademarks, the 'PALMER' Defendants intentionally led Plaintiff to believe that its telemarketers had the authority to act on 'PALMERs' behalf.
63. 'PALMER' and its' subsidiaries, provided its agents advertising on its website which affirmed to skeptical consumers, that, 'PALMER' and its telemarketers were *de facto*, 'Partners.'

#### **VIII. INJURY IN FACT**

64. Plaintiffs' injuries are both 'concrete' and 'particularized' thereby satisfying the requirements of Article III of the Constitution. (Id.)

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65. For an injury to be concrete it must cause material injury, meaning it actually exists. In this case, the Plaintiff took the affirmative step of enrolling on the National Do-Not-Call Registry for the purpose of preventing telemarketing calls to his telephone. Such telemarketing calls are a nuisance, an invasion of privacy, and an expense to Plaintiffs. See *Soppet v. enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012). All three of these injuries are present in this case. (See also *Chen v. Allstate Inc. Co.*, 819 F.3d 1136 (9th Cir. 2016).)
66. Furthermore, the Third Circuit recently stated, Congress found that ‘[u]nsolicited telemarketing phone calls or text messages, by their nature, invade the privacy and disturb the solitude of their recipients,’ *Van Patten*, 847 F.3d at 1043, and sought to protect the same interests implicated in the traditional common law cause of action. Put differently, Congress was not inventing a new theory of injury when it enacted the TCPA. Rather, it elevated a harm that, while ‘previously inadequate in law,’ was of the same character that previously existed ‘legally cognizable injuries.’ *Spekeo* 136 S.Ct. at 1549. *Spekeo* addressed, and approved, such a choice by Congress.



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Susinno v. Work Out World Inc., No. 16-3277, 2017 WL 2925432, at \*4 (3d Cir. July 10, 2017).

67. For an injury to be of particularized means, the injury must affect Plaintiff in a personal and individual manner (*See Spokeo*). Furthermore, Plaintiff is a person who pays for his phone, and is the regular carrier and user of the phone. All of these injuries are particular to Plaintiff.

**IX. THE MASSIVE SCOPE OF ILLEGAL TELEMARKETING AT ISSUE**

68. The scope of the illegal telemarketing practices at issue in this case are confirmed by records contained with the Federal Trade Commission's Do Not Call Registry Database and by past class action litigations and/or complaints addressing these same issues.
69. 47 U.S.C. § 227(c) states that, 'Any person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations proscribed under this subsection may bring a private action based on a violation of said regulations,' which were enacted to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.

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70. The TCPAs' implementing regulation—47 C.F.R. § 64.1200(c)—provides that, '[n]o person or entity shall initiate any telephone solicitation to a residential or business telephone subscriber who has registered his or her telephone number on the National do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal government.' See 47 C.F.R. § 64.1200(c).
71. 47 C.F.R. § 64.1200(e), provides that 47 C.F.R. §§ 64.1200(c) and (d) 'are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-153,' Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,' which the Report and Order, in turn, provides as follows:
- The Commission's rules provide that companies making telephone solicitations to residential, business or cellphone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. For reasons described above, we conclude that these rules apply to calls made to wireless telephone numbers. We believe that wireless subscribers must be afforded the same protections as wireline subscribers.



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72. Plaintiff at NO time gave ‘PALMER,’ ‘Prior Express Consent,’ too autodial and/or deliver ‘SPOOFED’ telemarketing calls to purchase an extended vehicle warranty insurance or any other products sold by ‘PALMER.’
73. In June of 2016, the United States District Court for the Northern District of West Virginia under the “TCPA” denied a motion to dismiss filed by “Got Warranty Inc.” as well as co-defendants NCWC and ‘PALMER.’ The Defendants filed a motion to dismiss the ‘TCPA’ class action on the ground that the plaintiffs’ did not suffer concrete harm by receiving telephone calls from the Defendants who engendered use of an, ‘Automatic Telephone Dialing System’ (ATDS) to contact plaintiffs cellular telephones. The court relied on *Spokeo v. Robbins* and found to the contrary, expressly holding that, ‘unwanted phone calls cause concrete harm.’ The court also found ‘intangible harm’ caused by telephone calls that violate ‘TCPA,’ such as ‘invasion of privacy,’ wasting a consumers time or causing risk of injury due to interruption of concentration while driving. In addition the drainage of a cellphone battery and the cost for electricity to charge the battery is concrete material harm. Therefore, a claim of this magnitude deserves to be heard in court.

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74. A formal request to the Federal Trade Commission has been proffered by the Plaintiff for telephone records and complaint records pertaining to present and past inquiries by consumers against, 'PALMER,' for the violation of 'TCPA'.

**X. THE TRUTH IN CALLER ID ACT OF 2009,  
111 P.L. 331, 124 Stat. 3572  
Prohibition on Provision of Inaccurate Caller Identification Information**

75. (a) In general-- It shall be unlawful for any person within the United States, in connection with any telecommunications service or IP-enabled voice service, to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value, unless such transmission is exempted pursuant to paragraph (3)(B).

(b) In general.--Any person that is determined by the Commission, in accordance with paragraphs (3) and (4) of section 503(b), to have violated this subsection shall be liable to the United States for a forfeiture penalty. A forfeiture penalty under this paragraph shall be in addition to any other penalty provided for by this Act. The amount of the forfeiture penalty determined under this paragraph **shall not exceed \$10,000 for each**



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violation, or 3 times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for any single act or failure to act.

**XI. NEW YORK STATE SENATE BILL S434**

76. Section one amends the general business law by adding a new section 399-ppp. Subdivision I of section 399-ppp provides that it shall be unlawful for any business entity, in connection with any telecommunications service or VoIP service, to cause any caller identification service to transmit false caller identification information when making a call to any person within the state with the intent to defraud or harass.

**NEW JERSEY P.L.1960, c.39 (C.56:8-1 et seq.)**

77. This bill, entitled the "Truth in Caller Identification Act," supplements the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), to make it an unlawful practice for any person, in connection with any telecommunications service used within this State, to knowingly cause any telephone caller identification ("caller ID") service to transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value

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**LEGAL DEFINITION OF ‘SPOOFING’**

78. ‘Caller ID spoofing is the practice of causing the telephone network to indicate to the receiver of a call that the originator of the call is a station other than the true originating station. (wikipedia)’

**SPOOFED PHONE CALLS RECEIVED BY PLAINTIFF**

79. ‘PLAINTIFF’ is filing a petition with the Attorney General of the State of New Jersey to enforce P.L.1960, c.39 (C.56:8-1 et seq.).
80. ‘PLAINTIFF’ is filing a petition with the Attorney General of the State of New York to enjoin ‘PALMER’ from engaging in further acts of caller ID telephone ‘SPOOFING’ under NEW YORK STATE SENATE BILL S434 and to impose penalties for no less than the maximum amount proscribed by law of ‘TEN THOUSAND DOLLARS’ (\$10,000) per ‘SPOOFED’ phone call dialed against ‘PLAINTIFF.’

**XII. SENATE, No. 743 STATE OF NEW JERSEY, 216th LEGISLATURE**

81. AN ACT prohibiting the manipulation of certain telephone caller identification information and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).
82. “Caller identification information” or “caller ID information” means information provided by a caller identification service regarding the



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telephone number of, or other **information regarding the origination of, a call made using a telecommunications service.**

83. A violation of this act shall be an unlawful practice subject to the penalties applicable pursuant to section 1 of P.L.1966, c.39 (C.56:8-13) and section 2 of P.L.1999, c.129 (C.56:8-14.3).
84. This bill, entitled the “Truth in Caller Identification Act,” supplements the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), to make it an unlawful practice for any person, in connection with any telecommunications service used within this State, to knowingly cause any telephone caller identification (“caller ID”) service to transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value, except for the following: 1) any authorized activity of a law enforcement agency; or 2) a court order that specifically authorizes the use of caller ID manipulation.
85. An unlawful practice under the consumer fraud act is **punishable by a monetary penalty of not more than \$10,000 for a first offense and not more than \$20,000 for any subsequent offense.** In addition, violations can result in cease and desist orders issued by the Attorney General, the

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assessment of punitive damages and the awarding of treble damages and costs to the injured party.

**XIII. THE LEGAL BASIS OF THE CLAIMS**

86. The Plaintiff's claim arise pursuant to the provisions of the TCPA, a Federal Statute enacted to prohibit unreasonable invasions of privacy via certain telemarketing practices.
87. There are questions of law and fact common to Plaintiff, including but not limited to the following:
- (a.) Whether 'PALMER' violated the TCPA by engaging in the act of effectuating unsolicited prerecorded and/or autodialed telemarketing calls to residential, business or cellphone lines?
  - (b.) Whether 'PALMER' and its' associates illegally attempted to solicit Plaintiff?
  - (c.) Whether unsolicited 'ATDS' telemarketing phone calls had been effectuated by agents, employees', telemarketers, subsidiaries or other associated business entities on behalf of, 'PALMER?'



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- (d.) Whether Plaintiff is entitled to statutory, injunctive and punitive damages as a result of 'PALMERs' illegal actions?
- (e.) Whether an agency relationship existed between, owners, directors and/or managers of 'PALMER' and if they had the ability to control the illegal telemarketing practices associated with 'PALMER' telemarketers, agents and/or subsidiaries?
- (g.) Whether, 'MICHAEL SCHAFTEL,' (CEO) provided 'PALMERs' telemarketers, agents, employees', subsidiaries or other associated business entities apparent authority to telemarket on 'PALMERs' behalf?  
  
and
- (h.) Whether 'MICHAEL SCHAFTEL,' ratified 'PALMERs,' illegal acts?

**XIV. COUNT ONE**  
**VIOLATION OF THE TCPA: 47 U.S.C. § 227(b)**

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88. Plaintiff re-alleges and incorporates the foregoing allegations contained herein, as set forth fully in this Complaint.
89. The 'TCPA' makes it unlawful to initiate any telephone call, to any residential or cellphone line, using an 'ATDS,' artificial or prerecorded voice, SPURIOUS and/or SPOOFED caller ID or to effectuate any debt collection, telemarketing, message, advertisement or solicitation of any kind without prior expressed written consent of the called party being dialed.
90. Plaintiff alleges that 'PALMER' engaged in an illegal telemarketing scheme, thereby violating of the provisions set forth within the 'TCPAs' prohibition against telemarketing using an 'ATDS' or engendering 'SPOOFED' caller IDs'. (*see Marks v. Crunch*)
91. Plaintiff alleges that such violations of the 'TCPA' were both willful and negligent.
92. As a result of 'PALMERs' illegal actions, Plaintiff is entitled to sustain his rights, status, and legal relations relating to 'PALMERs' use of illegal telemarketing practices using an 'ATDS' and/or 'SPOOFED' caller IDs' pursuant to the 'TCPA' through these actions.



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**XV.**

**COUNT TWO**

**INJUNCTIVE RELIEF TO BAR FUTURE TCPA VIOLATIONS**

93. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein, as set forth in this Complaint.
94. The 'TCPA' expressly authorizes the Court to issue injunctive relief against 'PALMER' to prevent further violations of the 'TCPA' from being inflicted against Plaintiff.
95. The 'TRUTH IN CALLER ID ACT OF 2009' expressly authorizes the Court to issue injunctive relief against 'PALMER' to prevent further violations of the 'TRUTH IN CALLER ID ACT OF 2009' from being effectuated against Plaintiff.
96. The 'NEW YORK TRUTH IN CALLER ID ACT,' (S434) expressly authorizes the Court to issue injunctive relief against 'PALMER' to prevent further violations of the 'NEW YORK TRUTH IN CALLER ID ACT' (S434) from being effectuated against Plaintiff and others similarly situated.
97. The 'NEW JERSEY TRUTH IN CALLER ID ACT,' expressly authorizes the Court to issue injunctive relief against 'PALMER' to prevent further violations pursuant to section 1 of P.L.1966, c.39 (C.56:8-13) and section 2

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of P.L.1999, c.129 (C.56:8-14.3), from being effectuated against Plaintiff.

98. Plaintiff, respectfully petitions the Court to order 'PALMER,' including but not limited to its employees, agents, telemarketers or other affiliates of, 'PALMER,' to immediately 'CEASE & DESIST,' from engaging in any further illegal telemarketing calls directed to Plaintiff and others similarly situated to prevent further violations of the, 'TCPA.'

**XVI. COUNT THREE**  
**VIOLATION OF NEW JERSEY P.L.1960, c.39 (C.56:8-1 et seq.)**

99. Plaintiff re-alleges and incorporates the foregoing allegations contained herein, as set forth fully in this Complaint.
100. NEW JERSEY P.L.1960, c.39 (C.56:8-1 et seq.) makes it unlawful to engender 'SPOOFED' caller IDs from a business, to effectuate any telemarketing, message, advertisement or solicitation of any kind with no exception.
101. Plaintiff alleges that, 'PALMER' engaged in an illegal telemarketing scheme, thereby violating of the provisions set forth within, NEW JERSEY P.L.1960, c.39 (C.56:8-1 et seq.) prohibiting telemarketing using 'SPOOFED' caller IDs'.



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102. Plaintiff alleges that such violations of NEW JERSEY P.L.1960, c.39 (C.56:8-1 et seq.) were both willful and negligent.

103. As a result of 'PALMERs' illegal actions, Plaintiff is entitled to sustain his rights, status, and legal relations relating to 'PALMERs' use of illegal telemarketing practices using 'SPOOFED' caller IDs' pursuant to NEW JERSEY P.L.1960, c.39 (C.56:8-1 et seq.) through these actions.

**XVII.                      COUNT FOUR**  
**VIOLATIONS OF NEW YORK SENATE BILL S434**

104. Plaintiff re-alleges and incorporates the foregoing allegations contained herein, as set forth fully in this Complaint.

105. NEW YORK STATE SENATE BILL S434 makes it unlawful to engender 'SPOOFED' caller IDs from a business, to effectuate any telemarketing, message, advertisement or solicitation of any kind with no exception.

106. Plaintiff alleges that 'PALMER' engaged in an illegal telemarketing scheme, thereby violating of the provisions set forth within, NEW YORK STATE SENATE BILL S434 prohibiting telemarketing using 'SPOOFED' caller IDs'.

107. Plaintiff alleges that such violations of NEW YORK STATE SENATE BILL S434 were both willful and negligent.

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108. As a result of 'PALMERs' illegal actions, Plaintiff is entitled to sustain his rights, status, and legal relations relating to 'PALMERs' use of illegal telemarketing practices using 'SPOOFED' caller IDs' pursuant to NEW YORK STATE SENATE BILL S434 through these actions.

**XVIII. COUNT FIVE**  
**VIOLATION OF NY Gen. Bus. Law § 349**

109. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein.
110. 'PALMER' engaged in deceptive practices in the conduct of business, trade and/or commerce in New York State, in violation of GBL § 349(a) in the course of promoting, advertising and marketing its extended vehicle warranty insurance, as set forth above.
111. 'PALMER' has damaged Plaintiff who is resident in New York through its deceptive practices in violation of GBL § 349(a).
112. 'PALMER' has wrongfully attempted to obtain pecuniary remuneration and/or property, directly and/or indirectly, by imparting these deceptive practices upon Plaintiff who is resident in New York.



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**XIX.**

**COUNT SIX**

**VIOLATION OF NY Gen. Bus. Law § 350**

113. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein.
114. 'PALMER' made representations and/or omissions of fact that were materially misleading by promulgating a spurious relationship with, Mercedes Benz of Atlantic City, New Jersey, and thereby made false advertisements and/or statements to induce Plaintiff, in the conduct of business, trade and/or commerce in New York State, in violation of GBL § 350, in the course of advertising, promoting, and/or marketing extended vehicle warranty insurance, as set forth above.
115. 'PALMER' has damaged Plaintiff who is resident in New York State through its false advertisements in violation of GBL § 350.

**XX.**

**COUNT SEVEN**

**REPEATED AND PERSISTENT FRAUD IN VIOLATION OF  
NEW YORK EXECUTIVE LAW § 63(12)**

116. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein.
117. 'PALMER' engaged in repeated and/or persistent fraud in violation of New York Executive Law § 63(12) in the course of its promotion, marketing,

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and/or advertisement of extended vehicle warranty insurance in New York State.

118. 'PALMER' engaged in repeated and/or persistent fraud in violation of New York Executive Law § 63(12) through its: (i) fraudulent scheme to promote and market extended vehicle warranty insurance as described above; and/or (ii) false statements and/or omissions to New York State on each of its applications to engage in insurance sales.
119. 'PALMER' engaged in repeated and/or persistent fraud in violation of New York Executive Law § 63(12) by promulgating its false statements and/or omissions to New York State on each of its applications to engage in the sale of extended vehicle warranty insurance.
120. 'PALMER,' damaged Plaintiff who is resident in New York State in order to aggrandize its profits, through repeated and persistent fraud in violation of New York Executive Law § 63(12).

**XXI.                      COUNT EIGHT**  
**REPEATED AND PERSISTENT ILLEGALITY IN VIOLATION OF**  
**NEW YORK EXECUTIVE LAW § 63(12)**

121. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein.



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122. 'PALMER' acting with Does' 1 through 5, engaged in repeated and/or persistent illegality in violation of New York Executive Law § 63(12) in the course of its, promotion, marketing, and/or advertising of extended vehicle warranty insurance in New York State.
123. 'PALMER' engaged in repeated and/or persistent illegality in violation of New York Executive Law § 63(12) through its violations pursuant to, *inter alia*: (i) General Business Law § 349; (ii) General Business Law § 350.
124. 'PALMER' damaged Plaintiff who is resident in New York State in order to aggrandize its ill-gotten profits, through repeated and persistent illegality in violation of New York Executive Law § 63(12).

**XXII.**

**COUNT NINE**  
**COMMON-LAW FRAUD**

125. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein.
126. 'PALMER' knowingly effectuated material misrepresentations and/or omissions of facts to Plaintiff, in order to induce Plaintiff to purchase 'PALMERs' extended vehicle warranty insurance, as set forth in detail above.

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127. 'PALMER' was aware when Plaintiff was solicited to tender payment to purchase extended vehicle warranty insurance by obfuscating the truth about its affiliation with Mercedes Benz of Atlantic City, New Jersey, on February 15, 2018. 'PALMER,' knowingly promulgated these misrepresentations and/or false omissions, or alternatively reckless incantations thereby disregarding the misrepresentations falsity.
128. 'PALMER' attempted to induce Plaintiff to tender payment for extended vehicle warranty insurance, knowing he would rely on 'PALMERs' misrepresentations and/or omissions.
129. Plaintiff did in fact reasonably rely upon 'PALMERs' misrepresentations and/or omissions until he contacted Mercedes Benz of Atlantic City, New Jersey to disavow 'PALMERs' claims.
130. Plaintiffs' reliance on 'PALMERs' misrepresentations and omissions of material fact, caused Plaintiff to suffer direct and consequential injury.
131. 'PALMERs' fraudulent conduct was egregious, as directed towards Plaintiff and involved a high degree of moral culpability.

**XXIII.**

**COUNT TEN**  
**CONSPIRACY**



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132. Plaintiffs re-allege and incorporate the foregoing allegations as set forth herein.
133. 'PALMER' willfully agreed to conspire with its telemarketers to knowingly proffer material misrepresentations and/or omissions of fact, in order to induce, Plaintiff to purchase 'PALMERs' extended vehicle warranty insurance, as set forth in detail above.
134. 'PALMER' employed these tactics in an effort to aggrandize profits from increased insurance sales.
135. 'PALMER' promulgated false or misleading statements directly and through its telemarketers to further the objectives of the conspiracy.
136. Plaintiff was directly and proximately harmed by the 'PALMER' conspiracy in an amount to be determined in this litigation.

**XXIV.**

**COUNT ELEVEN**  
**VIOLATION OF 15 U.S.C. §§ 52(a)**

137. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein.
138. 'PALMER' promulgated unfair or deceptive acts or practices. Dissemination of false and/or misleading advertisements within the provisions of

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subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 5, 15 USCS § 45.

139. 'PALMER' has no constitutional right to disseminate false advertisements by United States mails or by any means in commerce for purpose of inducing or which is likely to induce directly or indirectly purchase in commerce of misleading advertised products. American Medicinal Products, Inc. v Federal Trade Com. (1943, CA9) 136 F2d 426.

140. It is not necessary that false advertising be directly disseminated by 'PALMER,' since 15 USCS § 52 makes it unlawful for 'PALMER' to cause such false advertising to be disseminated. Shafe v Federal Trade Com. (1958, CA6) 256 F2d 661.

141. Advertising falls within proscription of Federal Trade Commission Act not only when there is proof of actual deception but also when representations made have capacity or tendency to deceive, that is, when there is likelihood or fair probability that reader will be misled; it is therefore necessary in these cases to consider advertisement in its entirety and not to engage in disputatious dissection; ultimate impression upon mind of reader arises from sum total of not only what is said but also of all that is reasonably implied;



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advertising need not be literally false in order to fall within proscription of Act. FTC v Sterling Drug, Inc. (1963, CA2 NY) 317 F2d 669.

142. The fact that 'PALMER' effectuated its representations in good or bad faith is not determinative of whether such statements are deceptive and misleading; however, in order to be held participant in deception, advertising agency must know or have reason to know of falsity of advertising. Doherty, Clifford, Steers & Shenfield, Inc. v FTC (1968, CA6) 392 F2d 921, 1968 CCH Trade Cases P 72397.

143. Plaintiff is entitled to recover from 'PALMER,' all monies Plaintiff has spent and will have to spend in the future to address the effects of 'PALMERs' actions.

**XXV.**

**COUNT TWELVE**  
**VIOLATION OF 15 U.S.C. §§ 52(a)**

144. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein.

145. 'PALMER' knowingly and willingly promulgated marketing, promotion and advertising that was intended to induce Plaintiff into purchasing extended vehicle warranty insurance. These deceptions violated the basic business principles that prevent unfair business competition and practices that

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includes any 'unlawful, unfair or fraudulent' act or practice, as well as any  
'unfair, deceptive, untrue or misleading' advertising.

146. 'PALMER' knowingly and willingly violated 15 U.S.C. § 45(a)(1) by fraudulently representing false and misleading advertising statements to mislead Plaintiff to believe, 'PALMERs' extended vehicle warranty insurance was affiliated with Mercedes Benz, Atlantic City, New Jersey.
147. The gravity of harm resulting from these unfair acts and practices outweighed any conceivable reasons, justifications and/or motives for 'PALMER' to engage in such deceptive acts and practices. By committing the acts and practices alleged herein, 'PALMER' proved that it has a penchant to engage in unfair business practices within the meaning of 15 U.S.C. § 45(a)(1).

**XXVI. COUNT THIRTEEN**  
**VIOLATION OF THE RACKETEER INFLUENCED**  
**CORRUPTION ACT (RICO) 18 U.S.C. § 1961 *et seq.*,**

148. Plaintiff re-alleges and incorporates the foregoing allegations as set forth herein.
149. Each officer, director, executive and manager associated with the 'PALMER' scheme to defraud Plaintiff, including Does 1 through 5, through a pattern of



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racketeering activities within the meaning of, 18 U.S.C. §§ 1961(1), 1961(5), and 1962(c) and used mail or wire facilities, is in violation of 18 U.S.C. § 1341 (mail fraud) and § 1343 (wire fraud).

150. 'PALMER' aided, abetted and committed what appears to be two predicate acts of racketeering, 18 U.S.C. §§ 1341 and 1343. 'PALMER' effectuated the same methods to induce Plaintiff to purchase its extended vehicle warranty insurance at any cost. As evidenced herein, a great deal of these illegal activities were enacted in the United States. Along with personal meetings, the 'PALMER' Defendants hatched and promoted its fraudulent scheme by using the phone, mail and internet to communicate its criminal activities.

151. 'PALMER' intended to defraud Plaintiff by obtaining pecuniary remuneration under materially false or fraudulent pretenses, false representations, false promises thereby furthering an ongoing pattern of concealment. 'PALMER' concealed these fraudulent activities hundreds of times in the past when they willingly engaged in criminal racketeering activities to further aggrandize profits at any cost.

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152. These RICO predicated acts of racketeering (18 U.S.C. § 1961(1)) include, but are not limited to:

(a) Mail Fraud: PALMER violated 18 U.S.C. § 1341 by sending or receiving, or by causing to be sent and/or received, materials via U.S. mail or commercial interstate carriers for the purpose of executing the unlawful scheme to advertise, manufacture and market car rental services by means of false pretenses, misrepresentations, promises, and omissions.

(b) Wire Fraud: PALMER violated 18 U.S.C. § 1343 by transmitting and/or receiving, or by causing to be transmitted and/or received, materials by wire for the purpose of executing the unlawful scheme to defraud and obtain money on false pretenses, misrepresentations, promises, and omissions.

153. Plaintiff demands the court to impose treble damages at three times actual damages, along with equitable relief for costs associated with this litigation pursuant to 18 U.S.C. § 1964(c).

154. WHEREFORE, Plaintiff, respectfully implores' the Court to enter judgment for each count in his favor, to thereby provide the following relief:

(a) As too, 'COUNT ONE,' statutory damages of \$500 per violation, or up to \$1,500 per violation if



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proven to be willful; and punitive damages as the Court see's just and proper;

- (b) As too, 'COUNT TWO,' a permanent injunction prohibiting Defendants, including but not limited to its employees, agents, representatives or other affiliates, to immediately CEASE & DESIST from effectuating any further telemarketing phone calls to Plaintiff which are in violation of the 'TCPA';
- (c) As too, 'COUNT THREE,' award the maximum penalty pursuant to the 'NEW JERSEY TRUTH IN CALLER ID ACT' which is TEN THOUSAND DOLLARS (\$10,000) for each 'SPOOFED' caller ID received by Plaintiff; with additional 'TREBLE DAMAGES' imposed for willful violation of the statute.
- (d) As too, 'COUNT FOUR, ' award the maximum penalty pursuant to the 'NEW YORK TRUTH IN CALLER ID ACT ' which is, 'TEN THOUSAND DOLLARS' (\$10,000) for each 'SPOOFED' caller ID received by Plaintiff; with additional, 'TREBLE DAMAGES' imposed for willful violation of the statute.
- (c) As too, 'COUNT FIVE,' relief as the court sees' just and proper.

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- (d) As too, 'COUNT SIX,' relief as the court sees' just and proper.
- (e) As too, 'COUNT SEVEN,' relief as the court sees' just and proper.
- (f) As too, 'COUNT EIGHT,' relief as the court sees' just and proper.
- (g) As too, 'COUNT NINE,' relief as the court sees' just and proper.
- (h) As too, 'COUNT TEN,' relief as the court sees' just and proper
- (i) As too, 'COUNT ELEVEN,' relief as the court sees' just and proper.
- (j) As too, 'COUNT TWELVE,' relief as the court sees' just and proper.
- (k) As too, 'COUNT THIRTEEN,' relief as the court sees' just and proper
- (l) Any other punitive damages as the Court finds just and proper.
- (m) All other and further relief as the Court deems necessary, just, and proper.



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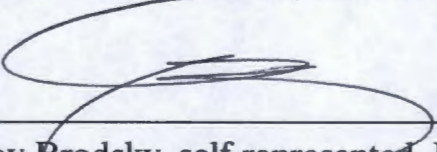
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**XXVII. JURY DEMAND**

Plaintiff demands a trial by jury in conjunction with the Constitution, of all claims set forth in front of this Court.

Signed this 5th day of June, 2019 at Great Neck, New York;



\_\_\_\_\_  
Jay Brodsky, self represented, ProSe



Billing period Feb 2, 2018 to Mar 1, 2018 | Account # 888737468-00001 | Invoice # 3696651740

**Jay Brodsky**

973.568.1666 | iPhone 6S Plus

**Talk activity - continued**

Date	Time	Number	Origination	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
Feb 9	4:42 P			Point Blank NY	1			
Feb 9	5:20 P							
Feb 9	5:25 P							
Feb 11	5:35							
Feb 11	5:58							
Feb 11	10:03							
Feb 12	2:42							
Feb 12	2:46							
Feb 12	4:21							
Feb 12	4:3							
Feb 12	4:3							
Feb 12	5:2							
Feb 12	5:2							
Feb 12	5:2							
Feb 12	6:							
Feb 12	7:							
Feb 13	6							
Feb 14	4							
Feb 14	5							
Feb 14	!							
Feb 14								
Feb 14								
Feb 14								
Feb 15	2:24 PM	973.369.9114	Manhasset, NY	Incoming, CL	5			Palmer
Feb 15	3:24 PM	973.568.6725	Manhasset, NY	Incoming, CL	3			Palmer
Feb 15	5:05 PM	609.645.9000	Manhasset, NY	Pleasantv, NJ	6			Mercedes Atlantic City, NJ
Feb 15								
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# Next Steps - FTC Complaint Assistant



FEDERAL TRADE COMMISSION

## Consumer Report to the FTC

FTC Report Number:

108010687

**The FTC cannot resolve individual complaints, but we can provide information about what next steps to take.** We share your report with local, state, federal, and foreign law enforcement partners. Your report might be used to investigate cases in a legal proceeding. Please read our Privacy Policy to learn how we protect your personal information, and when we share it outside the FTC.

### About You

**Name:** Jay Brodsky

**Address:** 240 East Shore Road

**City:** Great Neck **State:** NY **Zip:** 11023

**Country:** USA

**Email:** demcointerexport@yahoo.com

**Phone:** 973-568-1666

### What Happened

199 spoofed phone calls using an ATDS 2016-2018

### How It Started

**Date fraud began:** **Amount I was asked for:** **Amount I paid:**

1/21/2016 1300

**Payment Used:**

**How I was contacted:**

Phone Call: Mobile/Cell

### Who Is Your Complaint About

**Company/Individual 1**

**Name:** Palmer Administrative Services

**Address:** 3430 Sunset Apt/PO  
Ave **Box:**

**City:** Ocean **State:** NJ **Zip:** 07712

**Email Address:** info@palmeradministratve.com

**Phone:**

**Website:** palmeradministrative.com

**Representative:** Schaftel





Select Language ▼

## Welcome to the Office of Attorney General Online Submission Form

### Consumer Frauds Bureau Online Complaint Form

#### Form Successfully Submitted

[Print](#)

Thank you for filing your complaint with Bureau of Consumer Frauds and Protection. Your Intake Reference Number is #: 1-75687732. Please refer to your intake number when contacting the NYS Attorney General's Office regarding this complaint. Please click [here](#) to return to the Consumer Complaint resource center.

If you plan on mailing in supporting documents, please send them to the appropriate office listed on [this page](#).

#### Complaint Bureau

**Bureau Where You Filed Your Complaint** Consumer Frauds Albany

#### Your Information

<b>Salutation</b>	
<b>First Name</b>	Jay
<b>Last Name</b>	Brodsky
<b>Business Name</b>	
<b>Street Address</b>	240 East Shore Road
<b>Address Line 2</b>	Apt. 444
<b>City/Town</b>	Great Neck
<b>State/Province</b>	New York
<b>County</b>	Nassau
<b>Zip/Postal Code</b>	11023
<b>Country</b>	UNITED STATES
<b>Email Address</b>	demcointerexport@yahoo.com
<b>Primary Phone Number</b>	973-568-1666
<b>Alternate Phone Number</b>	973-568-3424
<b>Gender</b>	Male

#### Subject of Your Complaint

Are you complaining about a person or a company?	Company
Business Name	Palmer Administrative Services
Street Address	3430 Sunset Ave.
Address Line 2	
City/Town	Ocean
State/Province	New Jersey
Zip/Postal Code	07712
Email Address	info@palmeradministrative.com
Phone Number	800-599-9557
Website	palmeradministrative.com

**Additional Complaint Information**

Location of Incident/Transaction	Great Neck
Date of Incident/Transaction	12/12/2018
Name of Product or Service	extended vehicle warranty insurance
Cost of Product or Service	1300
Method of Payment	Other
Other Payment Method Information	no payment
Complaint Description	Palmer called using spoofed caller IDs 199 times over 3 years. An ATDS was used to call
Did you sign a contract?	No
Was product or service advertised?	
Have you already complained to company/individual?	Yes
How?	By Mail
Complaint Date	12/1/2018
Person contacted	Michael Schafften
Job title	Pres
Nature of response	none
Date of response	
Has matter been submitted to another agency or attorney?	Yes
Name	District Court New Jersey
Address	trenton new jersey
Phone	
Email Address	



Is court action pending? Yes

(Please describe as necessary) United States District Court New Jersey 47 USC 227

What form of relief are you seeking, e.g.,  
refund, credit, exchange, repair? injunction, compensatory, punitive

Manufacturer of Product

Street Address

City/Town

State/Town

Zip/Postal Code

Product Model or Serial Number

Warranty Expiration Date

Did Business Arrange Financing?

**In filing this complaint, I understand that:**

- ☒ The Attorney General is not my private attorney, but represents the public in enforcing laws designed to protect the public from misleading or unlawful business practices. My filing this complaint does not mean that the Attorney General has initiated a lawsuit or proceeding on my behalf or that it will do so.
- ☒ The Attorney General cannot give me legal advice or represent me in court. If I have any questions concerning my legal rights or responsibilities, I should contact a private attorney.
- ☒ In order to resolve my complaint, the Attorney General may send a copy of my complaint and any documents I provide to the person or business about whom I am complaining and I authorize that person or business to release information concerning my complaint to the Attorney General.
- ☒ The Attorney General works with other state, local and federal government agencies to investigate complaints and coordinate law enforcement and may also share my complaint with them. In addition, the Attorney General may use information from my complaint in legal proceedings to establish violations of law.
- ☒ Any false statement made in this complaint are punishable as crimes, including under Section 175 and/or Section 210 of the Penal Law.

By typing my full name below, I certify that the above complaint is true and accurate to the best of my knowledge and that any documents attached are true and accurate copies of the originals.

**Signature**

Jay Brodsky

**Date of Affirmation**

06/06/2019